



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2011-0551]

RIN 1625-AA00

Safety Zone; America's Cup Safety Zone and No Loitering Area, San Francisco, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone and no loitering area in the navigable waters of the San Francisco Bay near Treasure Island, CA in support of 2013 America's Cup races. This safety zone and no loitering area are established to enhance the safety of spectators and mariners near the north east corner of the America's Cup regulated area. All persons or vessels are prohibited from entering the safety zone and all persons or vessels are prohibited from anchoring or otherwise loitering in the no loitering area during the scheduled races without the permission of the Captain of the Port or their designated representative.

DATES: This rule is effective from July 4, 2013, to September 22, 2013. This rule will be enforced during all America's Cup races. A race schedule can be found in the docket.

ADDRESSES: Documents mentioned in this preamble are part of Docket Number USCG-2011-0551. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on "Open Docket Folder" on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Lieutenant Junior Grade William Hawn, U.S. Coast Guard Sector San Francisco; telephone (415) 399-7442 or e-mail at D11-PF-MarineEvents@uscg.mil. If you have questions on viewing or submitting material to the docket, call the Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

COTP	Captain of the Port
DHS	Department of Homeland Security
FR	<u>Federal Register</u>

A. Regulatory History and Information

On January 30, 2012, the Coast Guard published a notice of proposed rulemaking (NPRM) proposing to regulate the on-water activities associated with the "America's Cup World Series" regattas in 2012 and the "Louis Vuitton Cup," "Red Bull Youth

America's Cup," and "America's Cup Finals Match" scheduled to occur in July, August, and September, 2013 (77 FR 04501). After reviewing all comments received in response to the NPRM, the Coast Guard published a temporary final rule on July 17, 2012, that created a special local regulation (SLR) and safety zone, establishing regulated areas on the water to enhance safety and maximize access to the affected waterways during the America's Cup sailing events (77 FR 41902).

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." The Coast Guard is not issuing a notice of proposed rulemaking because it is impracticable and contrary to the public interest. The need for an expanded safety zone was not known at the time the previous regulations were issued for this series of races. Only after the Coast Guard learned that the racing vessels involved were faster and more dangerous did the need for this safety zone arise. The America's Cup races would occur before the rulemaking process would be completed, and delaying the effective date of this rule to allow for a comment period would be both impracticable and contrary to the public interest because

it would inhibit the Coast Guard's ability to protect spectators and vessels from the hazards associated with a large gathering of sailboats for a race. The safety zone and no loitering area are necessary to provide for the safety of event participants, spectators, and other vessels transiting the area. For the safety and time concerns noted, it is in the public interest to have these regulations in effect during the event.

Under 5 U.S.C. 553(d)(3), for the same reasons noted earlier, the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. A 30 day delayed effective date is impracticable and contrary to the public interest.

B. Basis and Purpose

The legal basis for the proposed rule is 33 U.S.C 1231; 46 U.S.C Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Public Law 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish safety zones.

After further review of safety concerns, the Coast Guard has decided to establish a safety zone and no loitering area in the navigable waters of the San Francisco Bay near Treasure Island, CA in support of 2013 America's Cup races to mitigate the dangers posed by spectator congestion and the vessel's rapidly changing, unpredictable course, high speed, and potential to capsize. Additionally, there have been recent changes in the north east

section of the America's Cup race area.

In the interest of time during the creation of the previous rules, the enforcement protocols were developed prior to seeing the 72-foot America's Cup racing vessels (AC72s) operate on the water in order to provide the public ample notice of the activities associated with the upcoming sailing races. Since the publication of the aforementioned regulations, the Coast Guard has been able to observe the AC72s operate on the water. During observation, the Coast Guard identified various potential safety hazards for people and vessels operating in proximity to the America's Cup racing vessels. The Coast Guard witnessed an AC72 capsize while executing race maneuvers in high-speed wind conditions characteristic of San Francisco and noted safety concerns stemming from the AC72's speed, size and unpredictable nature of maneuverability. On June 4, 2013, the Coast Guard also had the opportunity to conduct a tabletop exercise with America's Cup Race Management, the San Francisco Marine Exchange, the San Francisco Bar Pilots, and various other members of the maritime community to assess potential safety issues relating to the 2013 America's Cup sailing regattas and discuss measures for prevention and response. During this exercise, several stakeholders raised the subject of the AC72's speed and unpredictable maneuverability. Additionally, members of the deep-draft commercial shipping community raised concerns pertaining to the anticipated diminution of navigability of the

shipping channel due to spectator crowding and congestion associated with the viewing of the America's Cup in vicinity of buoys "1" and "2", marking the deep water route of the San Francisco Bay Regulated Navigation Area, 33 CFR 165.1181, depicted on NOAA Chart 18650.

C. Discussion of the Final Rule

The Coast Guard is establishing a safety zone and a no loitering area in the San Francisco Bay near Treasure Island, California during America's Cup races in 2013 to enhance the safety of spectators and create a predictable flow of traffic for mariners operating near the America's Cup race course. This safety zone and no loitering area will be effective throughout the duration of the America's Cup races scheduled in 2013.

The racecourse for the 2013 America's Cup sailing regattas will require race participants to sail to the north east corner of the regulated area, whereupon they will turn sharply south toward the finish line. Due to the design of the racecourse and the dangers posed by the America's Cup racing vessels conducting abrupt maneuvers in close proximity to spectators, the Coast Guard is creating a safety zone to provide a safety buffer at the north east corner of the regulated area. The Coast Guard is also establishing a no loitering area adjacent to the north east corner of the regulated area because of the need to minimize congestion in the waters of the commercial shipping channel adjacent to the America's Cup regulated area. This no loitering

area will create a predictable flow of traffic in waters between Treasure Island and the regulated area for the America's Cup races, thus mitigating the concerns brought forward by commercial vessel operators.

The Coast Guard will enforce the safety zone and no loitering area during the scheduled America's Cup races in 2013. The safety zone will encompass the navigable waters of the San Francisco Bay within a shape bounded by the following coordinates: 37°49'41"N, 122°24'17"W; 37°49'41"N, 122°24'07"W; 37°49'26"N, 122°23'51"W; 37°49'17"N, 122°23'51"W; thence back to the point of origin (NAD 83) and the no loitering area will encompass the navigable waters of the San Francisco Bay within the a shape bounded by the following coordinates: 37°49'55"N, 122°24'33"W; 37°50'00"N, 122°23'47"W; 37°50'00"N, 122°23'00"W; 37°48'59"N, 122°22'19"W; 37°48'40"N, 122°22'40"W; 37°48'40"N, 122°23'10"W; thence back to the point of origin (NAD 83). At the conclusion of the scheduled races the safety and no loitering area shall terminate.

The effect of the safety zone and no loitering area will be to provide a safety buffer to protect persons and vessels from oncoming America's Cup racing vessels and to create a safe and predictable transit area for mariners operating in close proximity to the America's Cup regulated area. At the conclusion of the scheduled races, the safety zone and no loitering area shall terminate. Except for persons or vessels authorized by the

Coast Guard Patrol Commander, no person or vessel may enter or remain in safety zone. The no loitering area is open to all traffic for transitory purposes only.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on numerous statutes and executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

We expect the economic impact of this rule does not rise to the level of necessitating a full Regulatory Evaluation. The safety zone and no loitering area are limited in duration, and are limited to a narrowly tailored geographic area. In addition, although this rule restricts access to a small section of the waters encompassed by the safety zone, the effect of this rule will not be significant because the local waterway users will have access to the no loitering area during the event. The entities most likely to be affected are waterfront facilities,

commercial vessels, and pleasure craft engaged in recreational activities.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect owners and operators of waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities and sightseeing. This safety zone and no loitering area would not have a significant economic impact on a substantial number of small entities for the following reasons. This safety zone and no loitering area would be activated, and thus subject to enforcement, for a limited duration. When the safety zone and no loitering area are activated, vessel traffic could pass safely around the safety zone and through the no loitering area. The maritime public will be advised in advance of this safety zone and no loitering area via Broadcast Notice to Mariners.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule

would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have

implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to

minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction

M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone of limited size and duration. This rule is categorically excluded from further review under paragraph 34(g) and 35(b) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165- REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add temporary § 165-T11-579 to read as follows:

§165-T11-579 Safety zone; America's Cup Safety Zone and No Loitering Area, San Francisco, CA

(a) Location. This temporary safety zone is established for the navigable waters of the San Francisco Bay near Treasure Island, CA as depicted in National Oceanic and Atmospheric Administration (NOAA) Chart 18650. The safety zone will encompass the navigable waters of the San Francisco Bay within a shape bounded by the following coordinates: 37°49'41"N, 122°24'17"W; 37°49'41"N, 122°24'07"W; 37°49'26"N, 122°23'51"W; 37°49'17"N, 122°23'51"W; thence back to the point of origin (NAD 83). The no loitering area will encompass the navigable waters of the San Francisco Bay within a shape bounded by the following coordinates: 37°49'55"N, 122°24'33"W; 37°50'00"N, 122°23'47"W; 37°50'00"N, 122°23'00"W; 37°48'59"N, 122°22'19"W; 37°48'40"N, 122°22'40"W; 37°48'40"N, 122°23'10"W; thence back to the point of origin (NAD 83).

(b) Enforcement Period. The zone described in paragraph (a) of this section will be effective from July 4, 2013, to September 22, 2013 and will be enforced during all scheduled America's Cup races in 2013. The Captain of the Port San Francisco (COTP) will notify the maritime community of periods during which this zone will be enforced via Broadcast Notice to Mariners in accordance with 33 CFR 165.7 or via actual notice on-scene.

(c) Regulations. (1) The safety zone is closed to all persons and vessels.

(2) The no loitering area is open to all persons and vessels for transitory use only.

(3) Persons and vessels operating within the no loitering area may not anchor or otherwise loiter.

(4) Vessel operators desiring to anchor or otherwise loiter within the no loitering area must contact Sector San Francisco Vessel Traffic Service at (415) 556-2760 or VHF Channel 14 to obtain permission.

(5) All persons and vessels transiting through or operating within the no loitering area must comply with all directions given to them by the COTP or a designated representative.

(6) The public can contact Sector San Francisco Bay at (415) 399-3530 to obtain information concerning enforcement of this rule.

(d) Enforcement. All persons and vessels must comply with the instructions of the COTP or the designated on-scene patrol personnel. Patrol personnel comprise commissioned, warrant, and petty officers of the Coast Guard onboard Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels. The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by local law enforcement as necessary. Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel must proceed as directed.

Dated: June 19, 2013

Gregory G. Stump
Captain, U.S. Coast Guard
Captain of the Port San Francisco

[FR Doc. 2013-16164 Filed 07/03/2013 at 8:45 am; Publication
Date: 07/05/2013]